It has been contended on behalf of the plaintiff that as administrator he has a right to look after and wind up the estate. That, of course, is perfectly true. He has a right to look after such part of the estate as exists. It is also contended that the plaintiff has a right to the premises occupied by the deceased until such time as a competent court makes an order for vacant possession against him. The fallacy of this argument lies in the fact that the plaintiff has never been in possession of the premises. There can be substance in his argument only if the contractual tenancy has not been determined. Had no steps been taken to terminate the contractual tenancy, he would be entitled to go into occupation by virtue of the contractual tenancy being vested in him as an administrator, but now that the contractual tenancy has come to an end and as no statutory tenancy can arise in his favour he has no right whatsoever *vis-a-vis* the tenancy of the premises.

It is true that the landlord of controlled premises is not allowed, even after termination of the contractual tenancy, to retake possession against the will of the tenant in the exercise of his common law rights, and this so whatever the method by which the contractual tenancy ended. But if there is no tenant within the meaning of the Control of Rent Ordinance, 1956, the landlord's common law right to retake possession is not restricted. The defendant cannot be expected to seek an order of court for vacant possession against a non-existent lawful or unlawful occupier.

As regards the property of the deceased lying on the premises, numerous letters were sent to the plaintiff asking him to take it away. At no time was this property withheld from him. He is therefore not entitled to an order of delivery up of the property. He is also not entitled to recover any expenses incurred in having the warrant of distress discharged before he became administrator. In any event he could recover his costs only in the distress proceedings.

For the reasons I have stated, the plaintiff's action is dismissed. As he obtained no leave of the court to bring this action, I award costs of the action against him personally.

Action dismissed.

Solicitors: *K. L. Devaser & Co.; Skrine & Co.*

PUBLIC PROSECUTOR v. YUSOFF

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 9 of 1965]

Criminal Law and Procedure — Trial — Nullity — Finding of — Meaning of — Proper order.

A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

CRIMINAL APPEAL.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Abdul Aziz J. (delivering oral judgment): In this case the respondent was charged under section 186 of the Penal Code for voluntarily obstructing a public servant, to wit, WPC. 221 in the discharge of her public function. The facts were briefly: on the day in question when WPC. 221 was on duty she saw the respondent carrying a pillion rider. She tried to stop the respondent but he refused to do so but proceeded on to a school. WPC. 221 followed him to the school and caught hold of his bicycle but the respondent pulled the bicycle away from her and the scuffle, it was alleged, amounted to obstruction of duty.

At the close of the case for the prosecution the learned magistrate acquitted and discharged the respondent on the ground that the trial was a nullity by reason of the absence of the sanction as required under section 129 of the Criminal Procedure Code (Cap. 6). Having made such finding the learned magistrate acquitted and discharged the respondent.

To my mind, the learned magistrate has misunderstood the effect of a finding of nullity. A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

I, therefore, substitute a finding of discharge for a finding of acquittal and discharge by the magistrate and this is without prejudice, of course, to any other action that the deputy public prosecutor may wish to take in the pursuit of this charge.

Order accordingly.

MOHAMED NOOR v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 7 of 1966]

Criminal Law and Procedure — Sentence — Crimes of violence — Prevalence of — Particular circumstances.

Penal Code, s. 324 — Voluntarily causing hurt with kris.

The appellant was convicted on a charge under section 324 of the Penal Code for voluntarily causing hurt with an instrument for cutting, to wit, a kris. He was sentenced to two years imprisonment. On appeal against the sentence;

Held: having regard to the particular circumstances

in Kelantan and also in view of the fact that the appellant had a previous conviction for a similar offence, the imposition of the sentence of two years, although harsh, was not manifestly excessive.

CRIMINAL APPEAL.

Abdul Aziz Abdullah for the appellant.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Abdul Aziz J. (delivering oral judgment): The appellant has appealed against the sentence of two years' imprisonment imposed by the learned magistrate for a conviction under section 324 of the Penal Code for voluntarily causing hurt with an instrument for cutting, to wit, a kris.

The appellant has filed several grounds of appeal and they all relate to questions of fact. There are certain established rules under which the appeal court will interfere with the finding of the trial magistrate on questions of fact. Applying these rules to the present appeal the learned counsel for the appellant has not been able to convince me that the finding of the learned magistrate was illegal or was against the weight of the evidence or that he had raised any wrong inference from the facts. He had applied his mind correctly to the question whether the injury on the complainant was caused by a kris or by a knife and he had also applied his mind to the question whether it was such as to reduce it to a lesser offence under section 335 of the Penal Code.

Under those circumstances I would dismiss the appeal against conviction.

On the question of sentence the learned magistrate has imposed a term of imprisonment of two years and his reason for doing so was that the instrument used was a dangerous weapon and that the injury was caused to a vital part of the body, that is the complainant's neck and as a result of the injury the complainant had to be hospitalised for eight days and thereafter treated as out-patient. The appellant also had one previous conviction for causing grievous hurt under section 325 which he admitted. The learned counsel for the appellant has urged me to say that there was some element of provocation in this case and it should reflect on the sentence imposed by the court. On the other hand, the learned Deputy Public Prosecutor has urged me to consider that offences of violence are prevalent in this part of the country and that the heavy sentences imposed by the courts here for offences of this nature have proved a great deterrent as evidenced by the reduction in the number of crimes of violence. I consider having regard to the particular circumstances in Kelantan and also in view of the fact that the accused had a previous conviction for a similar offence that the imposition of the sentence of two years, although harsh, was not manifestly excessive.

The appeal against sentence is also dismissed.

Appeal dismissed.

HAJI ABDUL RAHMAN v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Abdul Aziz J.) May 2, 1966]

[Kota Bharu — Civil Suit No. 29 of 1964]

Government Suit — Writ not issued till after expiry of twelve months — Whether action would lie against Government as principal when servant of Government was not made a party — Government Proceedings Ordinance, 1956, ss. 5 & 6.

The plaintiff brought an action to recover damages arising out of a traffic accident. The accident took place on April 2, 1963. The writ was submitted to the Registry April 1, 1964, with instructions that it was not to be issued until further instructions were received from the solicitors for the plaintiff and it was not finally sealed and issued till January 18, 1965. The driver of the Government motor vehicle was not made a party to the action.

Held: as the action was not commenced within twelve months after the neglect or default complained of and as the servant of the Government was not also made a defendant to the action, the action could not proceed and must be dismissed.

CIVIL SUIT.

Wong Kim Fatt for the plaintiff.

Azmi bin Dato' Kamaruddin (Legal Adviser, Kelantan) for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: In this case the plaintiff sued the Government of the Federation of Malaysia and the Public Works Department, Kelantan, Kota Bharu for damages arising from a traffic accident. It was alleged that somebody left an unlighted steam roller belonging to Government parked on the road at night causing the deceased who was riding a motor-cycle to crash into it with fatal consequences.

At the hearing of this action the learned State Legal Adviser who appeared for the defendants raised two important preliminary objections: firstly, that the Public Works Department Kelantan is not a legal person and secondly, the action was not commenced within twelve months from the date the cause of action arose. As regards the first preliminary objection, Mr. Wong, who appeared for the plaintiff conceded that the Public Works Department has no legal status and consequently applied for amendment of the pleadings by striking out the second defendant. The pleadings were accordingly amended. The learned State Legal Adviser then submitted that under section 6(1) and (4) of the Government Proceedings Ordinance, 1956, no